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South Carolina House of Representatives

Legislative Update

Robert J. Sheheen, Speaker of the House

Vol. 9

April 21, 1992

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House Week in Review

The House of Representative spent most of Wednesday again debating whether the Barnwell Regional Disposal Facility should remain open past its December 1992 closing deadline.

After consideration of a long list of amendments to H.3003, the Barnwell bill, the House again rejected the legislation on second reading. By a vote of 55-58, H.3003 failed to receive second reading in the House -- the vote coming after nearly five hours of debate.

Before the House failed to give H.3003 a second reading, the members had agreed on a long list of amendments to the bill. Amendments approved by the House included establishing a January 1, 1996 closing date for the Barnwell facility, setting milestones for development of the North Carolina waste disposal facility, limiting waste disposal to the Southeastern Compact states only, a "good neighbor" policy regarding the siting of the North Carolina facility, and the immediate closing of the Barnwell site if the federal court ruled waste compacts illegal.

This was the second time in two weeks the House considered the merits of extending the operation of the Barnwell low-level nuclear waste facility beyond 1992. The previous week, the House tabled H.3003 by a 47-46 vote. However, later that day, the House voted 59-50 to reconsider the vote tabling the Barnwell deadline extension.

In other House business, Speaker Sheheen appointed three House members to the budget conference committee. Reps. Boan, Rogers and McAbee will represent the House in the conference committee deliberations on H.3044, the Senate's version of the 1992-93 state appropriations bill.

On Tuesday, the House voted to amend H.3044 with the House version of the budget, as passed in H.4500, and send the bill back to the Senate. However, one change in the House version was made before sending the legislation to the Senate. The House voted to direct the three cents of the gasoline tax to the General Fund for one year with the intent of using the revenue to pay back the Hurricane Hugo note and replenish the constitutionally-mandated General Reserve Fund.

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The House made the change in the hopes of satisfying the questions raised by the Senate regarding the House's use of unallocated money in the Strategic Highway Plan for Improving Mobility and Safety (SHIMS) fund.

On Wednesday, the House celebrated South Carolina Tourism Week with a choral presentation by the Wade Hampton Choral Group and the Pelham Road Elementary Singers. The House also honored the National Guard Family of the year, Spec. and Mrs. Henry Harris. Members also heard a brief talk by actor Arnold Schwarzenegger, chairman of the President's Council on Physical Fitness and Sports. Schwarzenegger spoke on the importance of physical fitness among school children and announced he was visiting South Carolina to terminate the state's "couch potatoes."

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Bills Introduced

The following bills were introduced in the House of Representatives last week. Not all the bills introduced in the House are featured here. The bill summaries are arranged according to the House standing committee to which the legislation was referred.

Agriculture, Natural Resources and Environmental Affairs

Abandonment of Wildlife Carcasses (S.769, Sen. Drummond). Under this legislation, it would be illegal for a person to hunt a big game species and abandon the carcass in the woods. The bill also prohibits hunters from taking the head, hide, claws, teeth, antlers, feathers or internal organs and leaving the rest of the carcass. Big game would include deer, turkey and bear. This offense would be a misdemeanor punishment by a fine of up to \$200 or not more than 30 days in jail.

Charter Vessel Fees (S.1162, Sen. Drummond). This bill would lower the permit fees paid by some charter vessels. Under this bill, the annual permit fee for vessels carrying 7 to 49 passengers would be reduced from \$300 to \$250. The annual fees for vessels carrying more than 49 passengers would be lowered from \$500 to \$350.

Oil Spill Responders Liability Act (S.1320, Sen. Land). This legislation seeks to conform South Carolina law with the federal Oil Pollution Act of 1990 and with the laws of 18 coastal states, which have enacted statutes consistent with the federal limits on liability.

Under this legislation, a person would not be liable for removal costs or damages which result from actions taken or omitted in the course of assisting, advising, or acting under the direction of the federal on-scene coordinator or the state official responsible for oil spill response.

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This liability limitation would not apply to the responsible party, for personal injury or wrongful death, or if a person is grossly negligent. The legislation specifically states that nothing in the bill relieves the liability of the party responsible for the oil spill. The responsible party also is liable for any removal and damage costs.

Education and Public Works

S.C. State Trustee Board (H.4744, Rep. Foster). The name of the board of trustees would change from college to university under this legislation. The number of trustees also would increase from the current nine to 13 members. Twelve of those members would be elected by the General Assembly, two trustees from each of the state's six congressional districts. The governor or his designee would be the 13th member of the board. The bill would strike the current requirement that at least one of the elected trustees should be an alumnus of the school. Also stricken is the requirement that the governor's appointment is for a six year term. All terms would be for four years.

Textbook Excellence Act (H.4761, Rep. Fair). This legislation would make changes in the way textbooks are selected for the state's public schools. The textbook selection committees, appointed by the State Board of Education, would include members of the public with expertise in the area of study under consideration. Eighty percent of the committee must be lay members with emphasis on members representing the business community. No active classroom teacher could be a part of the committee unless he or she is retired. No person appointed to the committee could be employed directly or indirectly by a textbook publishing company, nor may anyone serve on the committee who has been employed by a textbook publishing committee during the past five years.

The criteria for textbooks as outlined in the bill would include: factual accuracy; compliance with state requirement for the subject matter; support for the free enterprise system and a demonstration of its benefits under the U.S. system; a clear expressing of the benefits of representative democracy, individual liberty, personal responsibility, economic and political freedom and other traditional values and principles of Western civilization and American society as espoused in the Declaration of Independence and the U.S. Constitution.

Textbook material must be available for public review and comment at least 60 days before final approval. Employees in the State Department of Education charged with overseeing textbook selection must have a current teaching certificate in the area for which they are responsible.

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Publishers submitting textbooks or other instructional materials for consideration by the selection committee must sign a certificate of accuracy guaranteeing that the materials are free of significant factual error. Failure to fulfill the guarantee would result in a fine of \$100,000 and/or suspension from submitting materials for review for at least two years.

River Gravel Repeal (H.4765, Rep. Quinn). This joint resolution would repeal the 1992 act which directed the State Highway Department to use river gravel in asphalt used in projects approved by bid. The joint resolution notes that the "General Assembly should not engage in activities directly affecting the business affairs involving private industry to the detriment of the state."

Judiciary

S.C. Local Government Development Agreement Act (H.4721, Rep. Jimmy Bailey). This legislation would give local governments the vehicle to establish procedures and requirements to consider and enter into development agreements with developers. These development agreements would have to be approved by ordinance.

Development agreements would encourage development while protecting the plans from subsequently enacted local legislation or from the effects of changing policies and procedures. The agreements would provide "reasonable certainty" as to the requirements that must be met in protecting vested property rights while maintaining the authority of local governments to enact and enforce laws to protect the public safety, health and general welfare of its citizens. The development agreements would have to be consistent with the local government's comprehensive plan and land development regulations. A public hearing must be held before an agreement is finalized. A local government can enter into a development agreement provided the property contained 150 acres or more and the development would be over a five year period. A municipality can enter into the same type of agreement for the same amount of land under the same time frame; however, the agreement would not become operative unless annexation proceedings are completed during the time frame of the development agreement. This agreement involving property within the unincorporated parts of a county must have the approval, by written resolution, of the county government.

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The development agreement would contain a description of all local development permits approved or needed for the development of the property. The agreement would also outline all the public facilities to serve the project, including who would provide the services and the date that any new facilities would be constructed. The agreement may require that any part of the development or the entire development be completed within a specific time frame. These dates could be extended by the local government upon the good faith showing of the developer.

The local government could apply subsequently enacted laws to the development if it can show that the agreement was based on inaccurate information supplied by the developer, or that the new laws are essential to the public safety or health of the community, or that the changes are provided for in the agreement. The local government also could show that circumstances have significantly changed since the execution of the agreement and if not addressed would pose a threat to the community.

The agreement could be mutually canceled or if the local government finds that the developer has breached the agreement.

Lobbying Amendments (H.4727, Rep. Beasley). This legislation makes a number of changes to the ethics and lobbying legislation passed last year. Among the changes proposed under this bill:

- Strikes the words "of a nominal value" from the educational materials definition of anything of value. Any educational materials would be OK as long as they are not offered with the intent of evading the restrictions of the lobbying law;
- Changes the definition of lobbyist's principal to read "a person is deemed a lobbyist's principal only as to the public office or public body to which he has authorized a lobbyist to engage in lobbying." This would limit the designation of a lobbyist's principal to only those government agencies for which the principal has hired a lobbyist to lobby.
- Lobbyists would no longer have to present to the Secretary of State a letter from the lobbyist's principal giving approval for the lobbyist to represent the principal.
- Lobbyists and lobbyist's principals would have to identify the public office or public body before which the lobbyist will represent the principal.
- Deletes provisions in the ethics law which require an organization, which rates the General Assembly, to list the names and addresses of each member of the General Assembly and each lobbyist or lobbyist principal belonging to the rating organization.
- Allows the Secretary of State to issue advisory opinions regarding the ethics and lobbying laws.

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- Deletes the provision prohibiting lobbyists or their principal from "facilitating" the providing food, lodging, entertainment, transportation or contributions to public officials or employees. Left in place are the provisions that prohibit a lobbyist or a principal from offering, soliciting or providing food, transportation, lodging, entertainment or contributions.
- Eliminates the general reference to "public employees" from those who may not accept or be provided food, lodging, transportation or entertainment by a lobbyist principal.
- Gives the Attorney General exclusive jurisdiction to prosecute violations of the ethics and lobbying provisions.
- Makes binding any advisory opinion of the State Ethics Commission on subsequent charges brought before the commission regarding people who relied on the previous commission opinions.
- Allows public employees to be paid honoraria.
- Allows payments to be arranged for a public official by the group before which he will speak. Currently, the statute allows the official to be reimbursed for his actual expenses.
- Allows candidates to establish more than one campaign savings account as long as they all are reported.

Workers Compensation Commission and Judicial Screening Committees (H.4722, Rep. Harrelson.) This legislation would set up a committee to screen worker's compensation commission candidates and would change the make-up of the legislative judicial screening committee. The committees would be composed of four attorneys who are not legislators, half who practice as plaintiff attorneys, half who practice as defense attorneys. These four attorneys would be elected by the General Assembly from a slate of eight candidates. The committees would also have two members of the House, two members of the Senate and two members of the public, who are not attorneys or legislators, appointed by the governor.

Further, the bill would prohibit any candidate for a judgeship or Worker's Compensation Commission from contacting any member of the screening committees. Gubernatorial appointees for the Worker's Compensation Commission would be subject to pre-screening and the committee would report its findings on the qualifications of the candidate to the governor.

The Court Administrator's Office would publish and send every member of the S.C. Bar the votes of the screening committee on the judicial and worker's compensation candidates, as well as the votes of the General Assembly.

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Criminal Domestic Violence of a High and Aggravated Nature. (H.4739, Rep. Hyatt). This bill would create the charge of criminal domestic violence of a high and aggravated nature. This offense would be punishable by a fine of not more than \$3,000 or jail time of up to three years. However, the court could sentence an offender to probation conditioned on participation in a battered spouse program or other psychiatric treatment.

Exception to Lobbying Employment (H.4756, Rep. Cromer). This legislation would allow a public employee to accept a new position with a business under the jurisdiction of his former agency if the head of the agency makes a written finding that the new job would pose no conflict of interest. Under the new ethics law, public officials and public employees are prohibited from serving as lobbyists or taking employment with a business regulated or directly affected by their former state jobs.

Failure to Return Rented Objects (S.552, Sen. Hayes). Under this bill, failure to return a leased motor vehicle after a week would be a misdemeanor punishable by a \$5,000 fine and/or five years in jail. Any person keeping rented material of any type, including a leased motor vehicle for less than a week but more than 72 hours after the due date also would be guilty of a misdemeanor carrying a \$500 fine.

Labor, Commerce and Industry

South Carolina Limited Liability Company Act (H.4732, Rep. Wilkins). This lengthy bill outlines the provisions governing limited liability companies. The legislative intent, as stated in the legislation, is to recognize the legal existence of limited liability companies beyond the limits of this state and that, subject to any reasonable registration requirements, any such limited liability company transacting business outside the state be granted protection of full faith and credit under federal constitutional provisions.

Medical, Military, Public and Municipal Affairs

Special License for Retired Physicians (H.4736, Rep. Wilkins). This legislation would authorize the State Board of Medical Examiners to issue a special medical license to retired physicians who volunteer their services.

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This license would allow retired physicians to provide their services without charge to public agencies or institutions or non-profit entities that provide services to indigent patients in medically underserved or critical-need areas. To be eligible, the physician has to have maintained his medical license in good standing for ten years in any medical licensing jurisdiction in the United States or in any branch of the U.S. Armed Services. The standard examination and any application or renewal fee will be waived for recipients of this special three-year license.

Physicians with this special license will not be subject to any form of malpractice actions while performing duties or activities directly related to this service. This license does not authorize the holder of this license to perform surgical procedures.

Physicians Assistants (H.4740, Rep. Cromer). This legislation describes the definition, qualifications, licensing, scope of practice, supervision, and discipline of physician assistants. A physician assistant is a person who graduates from a physician assistant or surgical assistant program, has passed a national certifying examination, or both. Physician assistants are licensed by the state Board of Medical Examiners after submitting an application, paying the appropriate fee, and meets licensing criteria. These licenses must be renewed periodically. Licenses must be available for inspection at the physician assistant's primary place of business. He also must wear a name tag, denoting him as a physician assistant. A provision exists for the board to issue a temporary one year license when all qualifications except the national exam have been met. A physician assistant may request that his license be placed on inactive status, excusing him from paying the renewal fee. If considered inactive, however, a physician assistant may not practice. The following groups do not have to be licensed: a physician assistant student, an employee of the federal government performing duties related to their employment, or a health-related professional who is not acting or claiming to be a physician assistant.

A physician assistant may practice medicine only under the supervision of a physician (M.D. or D.O.) licensed in the state. The physician and physician assistant may submit a joint application and fee which describes the manner and extent to which the physician assistant will practice and be supervised. The supervising physician may delegate responsibilities to the physician assistant, including prescribing and dispensing drugs, complying with federal and state regulations. He may also receive professional samples and distribute them as well. The supervision by the registered physician does not require physical presence. The supervising physician and physician assistant must be in contact with one another by radio, telephone, or other telecommunication device. When notifying the board of his intent to supervise a physician assistant, a licensed physician agrees to retain professional and legal responsibility for the care rendered by the physician assistant.

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The board may discipline physician assistants who violate part of this section. Causes of discipline include illegally obtaining or using a license, being convicted of a felony, being a habitual user of intoxicants or drugs such that it impairs normal duties, being determined as mentally incompetent, committing an act or moral turpitude, or representing himself as a physician. The board has a variety of violations and penalties available as options to discipline the physician assistant, ranging from revoking, limiting, or suspending a license to a private or public reprimand. An individual who acts as a physician assistant but is not licensed as a physician assistant is subject to the penalties applicable to the unlicensed practice of medicine.

A physician assistant may perform the following services, included within the education, training, or experience of the physician assistant: obtaining histories and performing physical examinations, ordering or performing diagnostic or therapeutic procedures, formulating a diagnosis, developing and implementing a treatment plan, monitoring the effectiveness of therapeutic interventions, assist at surgery, offering counseling and education to meet patient needs, and making appropriate referrals. These services can be performed in any setting authorized by the supervising physician.

Ways and Means

Sales Tax Exemption on Solid Waste Fees (H.4723, Rep. Thomas Alexander). This legislation would exempt from the state sales tax the newly imposed fees on the sale of motor oil, new tires, lead-acid batteries and white goods (appliances) required under the 1991 Solid Waste Policy and Management Act.

Insurance Surcharge (H.4734, Rep. Fulmer). Under this legislation, insurance companies would be prohibited from imposing a surcharge on a driver involved in a motor vehicle accident when the insured or the driver of the other vehicle involved has not been convicted of a moving traffic violation, unless the insurance company pays a claim for damage in connection with the accident.

Buy American Cars (H.4741, Rep. Cromer). This bill would direct the Division of Motor Vehicle Management to inspect the state fleet and determine the feasibility of having a mixture of full-size, intermediate and compact cars to ensure cost effectiveness. The division would make recommendations to each department regarding the downsizing of the fleet. Also, all state cars bought after July 2, 1993 would have to be products of American based manufacturers.

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Personal Assignment of State Cars (H.4742, Rep. Cromer). Excluding law enforcement and emergency vehicles, this bill would limit the personal assignment of state-owned cars to 1,040 vehicles.

Electronic Income Tax Filing (H.4759, Rep. Wilkes). This legislation is aimed at curbing fees for electronic tax filing and refund anticipation loans that are "exorbitant, excessive and far exceed any relationship to the service performed." The bill would require written explanation be given each consumer that the refund anticipated from electronic tax filing is the consumer's own money, withheld during the year from his paycheck, and that the refund anticipation loan is indeed a loan of money. The consumer would have to sign a statement acknowledging that he understands these facts. Fees for the refund anticipation loan would have to be disclosed to the consumer in writing and expressed as an annual percentage rate. The loan itself would be limited to \$300.

Violation of these provisions would be a misdemeanor carrying a \$2,000 fine and/or 90 days in jail. Each violation would constitute a separate offense.

Lease-Purchase and General Obligation Debt (S.1084, Sen. Leatherman). This legislation would make any lease-back or lease purchase agreement enter into by state or local governments subject to the constitutional debt limitation provisions. This would not be true if the agreement contains a non-appropriations clause stating that the rent is payable from a revenue producing project or a special source not involving any tax or state revenue. When figuring the lease-purchase agreement as part of the constitutional general obligation debt limitation, the agreement would constitute general obligation debt for the period of the lease.

Housing Trust Fund Act (S.1446, Sen. Lourie). This legislation would establish the S.C. Housing Trust Fund, which would be used to increase the supply of safe, decent and affordable housing to members of the very low or lower income households. Funding would be used to make loans, grants or provide for matching funds to secure financial assistance for affordable housing. No project or development could receive money from the fund unless the housing units are reserved exclusively for the use of members of very low or low income households for at least 30 years.

The state treasurer would be the trustee of the fund, which must be maintained separately from the General Fund. The money would be dispersed only with the signature of the chairman of the S.C. State Housing Finance and Development Authority and the board's executive director. A nine-member advisory committee would be created to advise the board on particularly critical housing needs.

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The board's executive director of would develop a comprehensive program for the use of the funds to ensure equitable distribution of the money between urban and rural areas, devise and implement an application system, provide technical assistance to applicants, and ensure all developments receiving assistance comply with the state's Fair Housing Act.

Without Reference

Athletic Regulation Division (S.1169, Sen. Giese). This bill would establish an Athletic Regulation Division within the Department of Labor. This division would assume all of the duties of State Athletic Commission regarding the supervision and management of all boxing, wrestling and sparring events and exhibitions, whether in person or via closed circuit television. This legislation would authorize the commissioner of Labor to promulgate regulations for the health and safety of the participates in the sport. The State Athletic Commission would assume an advisory role to the Labor commissioner.

Any person holding a boxing, wrestling or sparring event, or participating in one, would have to be licensed by the Athletic Regulation Division. The license would be renewed annually. A person would have to be 18-years-old to be licensed, although the age requirement could be waived for a specific participant.

The division would be allowed to discipline anyone associated with the sport for violation of the division regulations. This could include revocation or suspension of his license.

Boxing events would require a two week notice to the division and a written permit. A boxing permit would not be issued unless the names of all the participants are furnished, a surety bond is filed, and the promoters provide proof of medical and hospitalization insurance covering all participants. A wresting event could not be held unless the licensing requirements are met, and the promoter has complied with regulations issued by the division. Penalties are provided for those who file for permits late.

The building where the event is held must have the proper ventilation and fire escapes. Penalties are provided for those who sell tickets beyond the seating capacity of the building.

In addition to the age requirement, any participant must have a physician's certificate stating he is in good physical condition. In addition, a boxing event may not be held unless a licensed doctor is at ringside. If a boxer suffers a knockout, he may not participate in another event for 30 days.

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The provisions of this bill do not apply to college or high school boxing or wrestling events if all participants are students, nor do they apply to matches sanctioned by the U.S. Amateur Boxing Federation or the Amateur Athletic Union. Violation of these provisions would be a misdemeanor, punishable by a fine of not more than \$1,000 or jail time of not more than two years. The commissioner of Labor could issue a civil penalty of up to \$500.